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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,361	01/11/2002	Vance Martin Patterson	A7183	5710

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EXAMINER	
CIRIC, LJILJANA V	
ART UNIT	**PAPER NUMBER**
3753	

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	10/042,361	PATTERSON ET AL.	
	Examiner	Art Unit	
	Ljiljana (Lil) V. Ciric LVC	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 January 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12 and 14-30* is/are pending in the application.

4a) Of the above claim(s) *20-26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12,16-19 and 27-30* is/are rejected.

7)☒ Claim(s) *14 and 15* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *11 January 2002* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This Office action is in response to the reply filed on January 7, 2005.

2. Claims 1 through 12 and 14 through 30 remain in this application.

Response to Arguments

3. Applicant's arguments filed on January 7, 2005 have been fully considered but they are generally not persuasive.

For example, applicant argues essentially that the term "evaporative medium" as used in each of claims 4 and 28 is generally equivalent to the term "evaporative cooling element". The examiner respectfully differs, in that, as a standard art term, the term "cooling medium" or "evaporative cooling medium" generally is used to refer to a material or substance (i.e., a coolant) which evaporates. The context in which this term is used in claim 4, however, suggests that the term is used contrary to the standard art usage of the term and is instead used to refer to an evaporator *structure* or element. Thus, the intended scope of protection sought is not clear, and the corresponding indefiniteness rejections of claims 4 and 28 are repeated below. A handful of other rejections of the claims under 35 U.S.C. 112, second paragraph, have either not been obviated or have not been addressed by the reply filed on January 7, 2005, and are also generally repeated below.

As a preface to the examiner's traversal of applicant's arguments relating to the applicability of the prior art rejection based on the *Talbert et al.* reference as applied in the previous Office action, applicant is respectfully reminded that claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974).

Applicant is also respectfully reminded that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120

USPQ 528, 531 (CCPA 1959). Also, "[A]pparatus claims cover what a device *is*, not what a device *does*. (Emphasis in original). Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

More particularly, in response to applicant's argument that the *Talbert et al.* reference fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the instant invention is a system which is capable of alternatively being used as a heater or as an evaporative cooler and that it is characterized by first and second interchangeable attachment units for heating and cooling) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Applicant's amendment of the claims, however, has obviated the rejection of the claims as being anticipated by the *Tippmann et al.* reference as cited in the previous Office action.

Election/Restriction

4. Claims 20 through 26 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in the paper mailed on October 31, 2003.

Drawings

5. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings filed on January 11, 2002 have previously been objected to by the draftsperson for the reasons set forth in the Notice of Draftsperson's Patent Drawing Review dated February 25, 2004 and mailed with the first Office action on the merits on February 26, 2004. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are **required** in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

6. Receipt and entry of the amended abstract is hereby acknowledged.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 4, 9, 16, 19, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites "at least one evaporative cooling *medium*, positioned within a frame of said single base unit". While an evaporative cooling medium is recited, the context of the claim appears to warrant the recitation of an evaporative cooling element or apparatus and not a medium per se. As a standard art term, the term "cooling medium" or "evaporative cooling medium" generally is used to refer to a material or substance (i.e., a coolant) which evaporates. The context in which this term is used in claim 4, however, suggests that the term is used contrary to the standard art usage of the term and is instead used to refer to an evaporator *structure*. Thus, the intended scope of protection sought is not clear, and the

claim is rendered indefinite thereby. Claim 28 contains the same limitations and is similarly rendered indefinite thereby.

With regard to claim 9 as written, it is not clear to what the limitation "said heated output range" refers, especially since there is no antecedent basis for this limitation in the claims.

Also for example, the recitation of "a double pulley device attached to said blower" in claim 16 follows a wherein clause and is not previously positively recited in the claim. It is thus not clear whether or not the aforementioned represents a positive recitation of the double pulley device as being attached to the blower, thus rendering indefinite the intended metes and bounds of protection sought.

Claim 19 recites plural nested means-plus-function recitations, including one comprising the preamble, yet applicant has failed to clearly specify to which equivalents each of these means corresponds.

The above is an indicative, but not necessarily an exhaustive, list of 35 U.S.C. 112, second paragraph, problems. Applicant is therefore advised to carefully review all of the claims for additional problems. Correction is required of all of the 35 U.S.C. 112, second paragraph problems, whether or not these were particularly pointed out above.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. As best can be understood in view of the indefiniteness of claim 4, claims 1 through 8, 10, 12, 17, 18, 27, 29, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by *Talbert et al.*

Talbert et al. discloses an apparatus for adjusting air temperature essentially as claimed, including, for example: three units 100, 200, and 210 as shown in Figure 12, with unit 100 readable on the

single base unit as recited in the claims of the instant application; a blower 156; a fuel source and burner 108 in heat exchange unit or heater box 40 [see Figures 8 and 12]; a reservoir or tank 20 [see Figure 10]; a pump 66; and, an ignition module as shown in Figure 15, including a flame sensor or flame sensor module 304 connected to an igniter unit 300.

The reference thus reads on the claims.

Allowable Subject Matter

11. Claims 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 16 and 28 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

13. The non-application of art against claims 9 and 19 should not be construed as an indication that the claims contain allowable subject matter but rather that the patentability of the claims cannot be determined at this time due to indefiniteness and/or other problems under 35 U.S.C. 112, first and second paragraphs.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action

is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (571) 272-4909.

While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene, can be reached at (571) 272-4930.

lvc

March 29, 2005

LJILJANA V. CIRIC
PRIMARY EXAMINER
ART UNIT 3753